

United States  
Circuit Court of Appeals

For the Ninth Circuit.

OSCAR SPORGEON,

Plaintiff in Error,

vs.

ANDREW F. MAHONY, ANDREW F. MAHONY, Trustee, ROSE A. MAHONY, ROSALIE MAHONY, ROSE C. MAHONY, MARIE J. HEAPHEY, C. J. HENDRY CO., INC., GERTRUDE M. KINNEY, CARL T. LONG, MARGUERITE M. LONG, JAMES McLAUGHLIN, GERTRUDE C. McCABE, ROBERT J. LONG, EMIL KLICKA, GEORGE A. STOCK, WILLIAM ANDERSON and JOHN C. KIRKPATRICK,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed

MAY 21 1935

F. D. Mockler



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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OSCAR SPORGEON,

Plaintiff in Error,

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ANDREW F. MAHONY, ANDREW F. MAHONY, Trustee, ROSE A. MAHONY, ROSALIE MAHONY, ROSE C. MAHONY, MARIE J. HEAPHEY, C. J. HENDRY CO., INC., GERTRUDE M. KINNEY, CARL T. LONG, MARGUERITE M. LONG, JAMES McLAUGHLIN, GERTRUDE C. McCABE, ROBERT J. LONG, EMIL KLICKA, GEORGE A. STOCK, WILLIAM ANDERSON and JOHN C. KIRKPATRICK,

Defendants in Error.

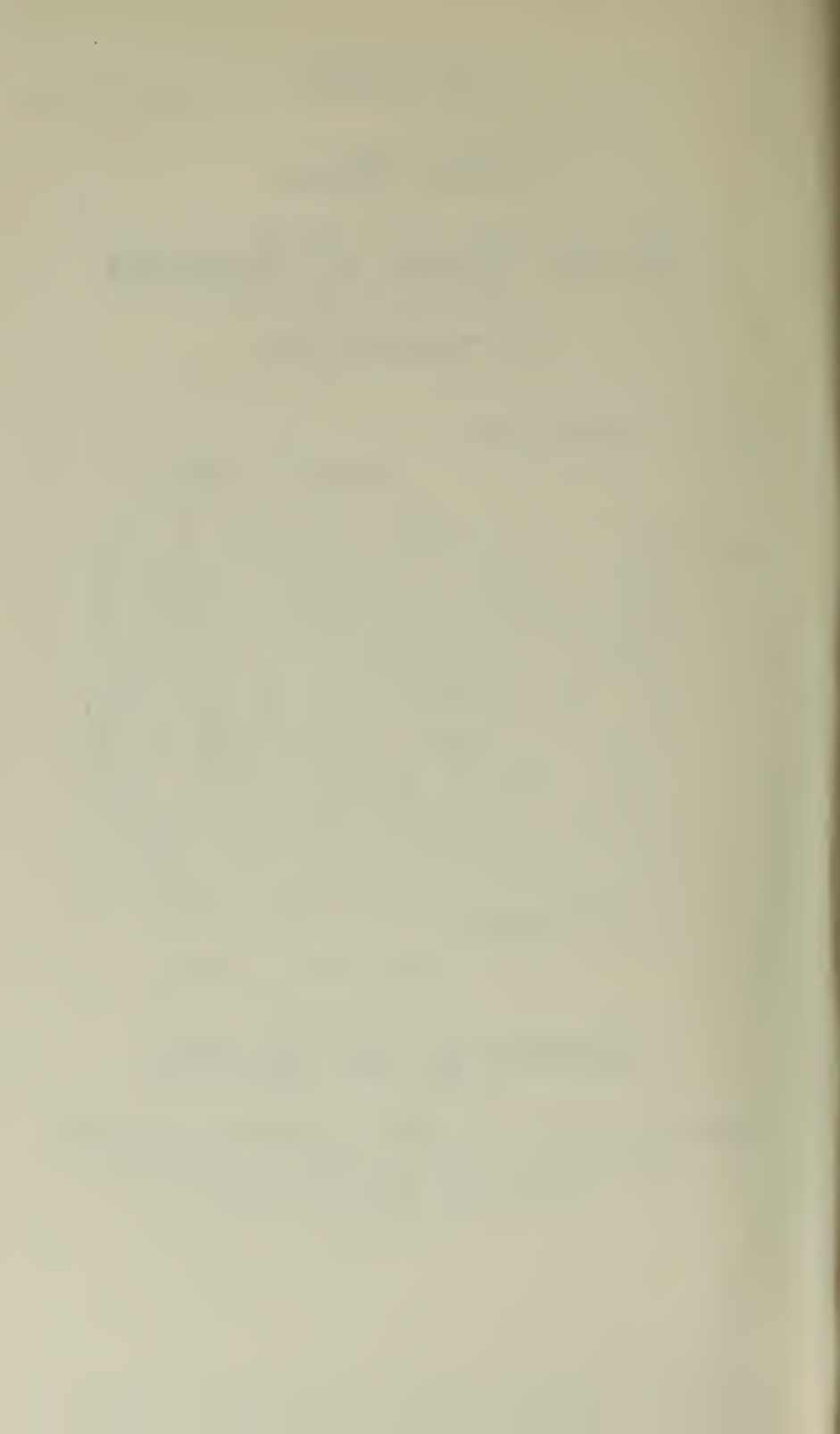
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Transcript of Record.

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Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

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GREENE,  
Balfour Bldg., San Francisco, Calif.,  
Attorneys for Defendants.

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In the District Court of the United States in and  
for the Northern District of California, Sec-  
ond Division, At Law.

No. 17168.

Complaint by Seaman Under Jones Act of June  
5th, 1920.

OSCAR SPURGEON,

Plaintiff,

vs.

ANDREW F. MAHONY, ANDREW F. MA-  
HONEY, Trustee, ROCE A. MAHONY,  
ROSALIE MAHONY, ROSE C. MAHONY,  
MARIE J. HEAPHEY, C. J. HENDRY  
CO. (Inc.), GERTRUDE M. KINNEY,  
CARL T. LONG, MARGUERITE M.

LONG, JAS. McLAUGHLIN, GERTRUDE  
C. McCABE, ROBERT J. LONG, EMIL  
KLICKA, GEO. A. STOCK, WM. ANDER-  
SON, JOHN C. KIRKPATRICK,  
Defendants.

COMPLAINT.

The plaintiff complains and for his cause of action alleges:

(1)

That the said C. J. Hendry Company is a corporation. That on or about the 14th day of August, 1924, the said plaintiff was employed on a certain Amercian vessel known as "John C. Kirpatrick," which said vessel was owned by the said defendants and was operated by the said defendant Andrew F. Mahony, as managing owner as well as part owner. That as such managing owner the said Andrew F. Mahony had full charge and control thereof with the power in him to employ all men working thereon.

(2)

That at the time of the injury hereinafter set out the said vessel was used in the carrying of lumber between California ports. [1\*]

That the said Andrew F. Mahony is a resident of the city and county of San Francisco, State of California.

That the home office of the said vessel is in the city and county of San Francisco, State of California.

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\*Page-number appearing at foot of page of original certified Transcript of Record.

(3)

That on or about the 14th day of August, 1924, while the said plaintiff was a seaman, to wit, a second mate on the said vessel at the rate of wages of \$135.00 per month and his board and room, at San Pedro, California, and while the said plaintiff was employed as a second mate on said vessel, and while he was in the performance of his duty as a second mate, and while each and all on said vessel were seamen and fellow servants of the said plaintiff, the said defendants, acting by and through the said managing owner, and by and through the officers in charge of said vessel failed and neglected to keep the said vessel and its appliances in a reasonable safe condition. That said neglect of duty is described as follows:

(4)

That it was the duty of the said defendants, and each of them, to use ordinary and reasonable care to the effect that the said plaintiff might have a reasonable safe place to work while he was employed by the said defendants in the manner aforesaid, and it was a nondelegable duty of the said defendants that they and each of them should use ordinary and reasonable care that a certain bolt, hereinafter referred to was so fastened that the same would resist an ordinary pull for which said bolt was intended.

(5)

That on or about the said date and place, while the defendants were in the act of moving certain laths on the *the* said vessel, preparatory for un-

loading of the lumber [2] on said vessel, a certain rope was fastened to said loose and dangerous bolt, and as a winchman, employed by the said defendants, used the vessel's winch for the pulling of a heavy rope fastened to a ring on said loose and dangerous bolt, the man in charge of said winch pulled out said bolt as the said bolt could not stand an ordinary strain by reason of the matters aforesaid, and while the said man, in charge of said winch, was thus pulling the said bolt was pulled loose on account of the manner in which it was fastened to the deck and on account of the rotten condition of said deck, and as it became loose the rope so fastened to the said bolt, struck the said plaintiff and fractured the spinal cord of the plaintiff. The plaintiff did not know of the said dangerous condition.

(6)

That the said negligence was and is the direct and proximate cause of the injury to the plaintiff.

(7)

That up to and including the date of the said injury the plaintiff was a strong and healthy man, earning the sum of One Hundred and Thirty Dollars per month and his board and room. That by reason of said injury the plaintiff is now confined in the Marine Hospital, San Francisco, California, and compelled to be in a plaster of paris cast.

The plaintiff alleges that the said injury is very painful, and it is very painful to be on his back in a plaster of paris cast. The said plaintiff alleges on his information and belief that the said defend-

ants in the manner aforesaid has caused the plaintiff to be a cripple for life and that he *he* cannot any more follow his occupation as a seaman. [3] He suffers mentally by reason of that he does not know if he will live or die.

That the said defendants *has* thereby damaged the said plaintiff in the sum of Fifty Thousand (50-000.00) Dollars and no part of said sum has been paid.

Wherefore the plaintiff prays judgment against the said defendants in the sum of Fifty Thousand (\$50,000.00) Dollars and his costs.

S. T. HOGEVOLL,  
Attorney for the Plaintiff. [4]

State of California,  
City and County of San Francisco,—ss.

Oscar Spurgeon, being by me first duly sworn on his oath, deposes and says: That he is the plaintiff in the above-entitled action, that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters alleged on his information and belief, and as to those matters he believes them to be true.

OSCAR SPURGEON.

Subscribed and sworn to before me this 2d day of Sept., 1924.

[Seal] HENRY B. LISTER,  
Notary Public in and for the City and County of  
San Francisco, State of California.



[Endorsed]: Filed Sep. 3, 1924. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [5]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

AT LAW—No. 17,168.

OSCAR SPURGEON,

Plaintiff,

vs.

ANDREW F. MAHONY, ANDREW F. MAHONY, Trustee, ROSE A. MAHONY, ROSALIE MAHONY, ROSE C. MAHONY, MARIE J. HEAPHEY, C. J. HENDRY CO. (Inc.), GERTRUDE M. KINNEY, CARL T. LONG, MARGUERITE M. LONG, JAS. McLAUGHLIN, GERTRUDE C. McCABE, ROBERT J. LONG, EMIL KLICKA, GEO. A. STOCK, WM. ANDERSON, JOHN C. KIRKPATRICK,

Defendants.

ANSWER OF DEFENDANTS C. J. HENDRY COMPANY, ROBERT J. LONG, ANDREW F. MAHONY, ANDREW F. MAHONY, Trustee, ROSALIE MAHONY AND ROSE A. MAHONY.

Now come the defendants C. J. Hendry Company, Robert J. Long, Andrew F. Mahony, Andrew F.

Mahony, Trustee, Rosalie Mahony and Rosa A. Mahony and answering unto the complaint herein, admit, allege and deny as follows:

I.

Admit that C. J. Hendry Company is a corporation and that on or about the 14th day of August, 1924, the said plaintiff was employed on a certain American vessel known as the "John C. Kirkpatrick" and that said vessel was owned by the defendants named in the title of the action. Admit that Andrew F. Mahony was the managing owner as well as part owner, but deny that said Andrew F. Mahony operated said vessel or that said Andrew F. Mahony had full charge and control thereof or that he had the power in him to employ [6] all men working thereon and in this behalf allege that said Andrew F. Mahony was entrusted with the operation of said vessel as agent for himself and his co-owners and not otherwise.

II.

Answering unto the allegations of paragraph III of the complaint herein, these defendants deny that on or about the 14th day of August, 1924, or at any time while the said plaintiff was a seaman, to wit, a second mate on the said vessel, at the rate of wages of \$130.00 per month and his board and room or otherwise at San Pedro or at any other place, and/or while the said plaintiff was employed as a second mate on said vessel, and/or while he was in the employment of his duty as a second mate, and/or while each and all on the said vessel were seamen and fellow-servants of the said plaintiff, the said

defendants or any of them, acting by and through the said managing owner or otherwise, and/or by and through the officers in charge of said vessel or any of them, failed and neglected or failed or neglected to keep the said vessel and/or its appliances in a reasonably safe or in a reasonably safe condition. Deny that there was any neglect of duty or that said or any neglect of duty is described in said complaint as follows, or otherwise or at all.

### III.

Answering unto the allegations of paragraph V of the complaint herein, these defendants deny that on or about the said day and place or at any time or place, while the said defendants were in the act of moving certain laths on the said vessel preparatory for unloading of the lumber on said vessel or otherwise, a certain rope was fastened to the said or any loose or dangerous bolt or loose and dangerous bolt or that said or any bolt was loose or dangerous. Admit that as a winchman employed by the said [7] defendants used the vessel's winch for the pulling of a heavy rope fastened to a ring on a certain bolt, that the bolt pulled out; but deny that said bolt was loose and/or dangerous and/or that the said bolt could not stand an ordinary strain by reason of the matters aforesaid or otherwise. Admit that while the said man in charge of said winch was thus pulling the said bolt was pulled loose, but deny that it was pulled loose on account of the manner in which it was fastened to the deck and/or on account of the rotten condition of said deck and deny that said deck was in a



rotten condition or that said bolt was fastened to the deck in an improper manner; and having no information or belief upon the subject, deny that as said rope became loose it struck the said plaintiff or that it injured the spinal cord of the said plaintiff. Deny that the condition was dangerous and in this behalf allege that the condition of said bolt was open, apparent and obvious and that plaintiff had full knowledge of the condition of said bolt at the time and place alleged in the complaint.

## IV.

Answering unto the allegations of paragraph VI of the complaint herein, these defendants deny that said or any negligence was and is or was or is the direct and proximate cause of the injury or any injury to the plaintiff.

## V.

Answering unto the allegations of Paragraph VII of the complaint herein, these defendants allege that they have no information or belief sufficient to enable them to answer the allegations in said paragraph contained and placing their denial on that ground, deny each and every allegation in said paragraph contained, and deny further that said defendants or any of them have thereby or otherwise damaged the plaintiff in the sum of \$50,000 or in any sum [8] or otherwise or at all, and admit that no part of said sum has been paid.

FURTHER ANSWERING THE ALLEGATIONS OF THE COMPLAINT HEREIN AND FOR A FIRST, AFFIRMATIVE AND FUR-

## THER DEFENSE, THESE DEFENDANTS ALLEGE:

## I.

That by the Act of Congress of the United States of America of June 26, 1884, entitled, "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade," etc., Chapter 121, section 18, 23 Stat. at Large of the United States, page 57, it is provided as follows:

"The individual liability of a shipowner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending; Provided, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners."

## II.

That by the Revised Statutes of the United States, section 4289, as amended by the Act of February 18, 1875, Chapter 80, section 1, and Act of June 19, 1886, Chapter 421, section 4, it is provided:

"The provisions of the seven preceding sections, and of section eighteen of an act entitled 'An Act to remove certain burdens on

the American merchant marine and encourage the American foreign carrying-trade, and for other purposes' approved June twenty-sixth, eighteen hundred and eighty-four, relating to the limitations of the liability of the owners of vessels, shall apply to all sea going vessels, and also to all vessels used on lakes or rivers, or in inland navigation, including canal-boats, barges, and lighters." [9]

### III.

That at all times referred to in the complaint herein, the steamer "John C. Kirkpatrick" was and now is a seagoing American vessel.

### IV.

That at all times referred to in the complaint herein, defendant C. J. Hendry Company was and now is the owner of a  $\frac{24}{600}$  interest or share in the said steamer "John C. Kirkpatrick" and no more; that said defendant Robert J. Long was and now is the owner of a  $\frac{45}{600}$  interest or share in the said steamer and no more; that defendant Andrew F. Mahony was and now is the owner of a  $\frac{65}{600}$  interest or share in said steamer and no more; that defendant Andrew F. Mahony, Trustee, was and now is the owner of a  $\frac{5}{600}$  interest or share in the said steamer and no more; that defendant Rosalie Mahony was and now is the owner of a  $\frac{3}{600}$  interest or share in the said steamer and no more; that defendant Rose A. Mahony was and now is the owner of a  $\frac{66}{600}$  share in the said steamer and no more.

## V.

That if any act or acts or negligence of any person caused the injury to plaintiff herein as alleged in the complaint or otherwise or at all, the said act or acts or negligence were wholly without the privity or knowledge of these defendants or either of them.

## VI.

That these defendants claim that the individual liability of each of them shall be limited to the proportion of the damage, if any, that shall have been adjudged to have been suffered by plaintiff herein, that the individual share of each of these defendants bear to the whole vessel. [10]

FURTHER ANSWERING THE ALLEGATIONS OF THE COMPLAINT HEREIN AND FOR A SECOND AFFIRMATIVE AND FURTHER DEFENSE, THESE DEFENDANTS ALLEGE:

## I.

That at the time and place mentiontd in the complaint plaintiff was in charge, himself, of the movement of a load of laths from off the top of the hatch of the steamer, preparatory to discharging cargo, and that in rigging up the line used in drawing the load further aft than the vessel's gear could bring it, plaintiff carelessly and negligently caused a line to run through a certain eye-bolt fastened to the deck and then pulled away to the right and at an angle, and that by reason of the failure to use a block in connection with said eye-bolt, said bolt was subjected to an enormous and severe strain



and that solely by reason of the negligent manner in which the operation of moving the load was conducted by plaintiff as aforesaid, the bolt carried away and that if plaintiff received any injuries thereby, said injuries were due wholly and solely to plaintiff's own fault and negligence in the premises and not otherwise. That there were available plenty of blocks for plaintiff's use had he so elected to use them, but that he failed and neglected so to do although he knew or should have known that he thereby was subjecting said bolt to a strain far beyond that which it was intended to bear.

FURTHER ANSWERING THE ALLEGATIONS OF THE COMPLAINT HEREIN AND FOR A THIRD AFFIRMATIVE AND FURTHER DEFENSE, THESE DEFENDANTS ALLEGE:

I.

That at all times mentioned in said complaint, defendants and each of them used ordinary and reasonable care to provide [11] plaintiff with a reasonably safe place to work, and they and each of them exercised due diligence to ascertain that the certain bolt referred to in the complaint was so fastened that the same would resist an ordinary pull for which said bolt was intended, and that if and in so far as there was any defect in said bolt or in the manner in which the same was fastened (which these defendants deny existed) said defect was latent in character and undiscoverable by the exercise of such due diligence.

FURTHER ANSWERING THE ALLEGATIONS OF THE COMPLAINT HEREIN AND FOR A FOURTH AFFIRMATIVE AND FURTHER DEFENSE, THESE DEFENDANTS ALLEGE:

I.

That at all times herein mentioned plaintiff was an experienced, licensed officer of mature years, to wit, of the age of forty-six (46) years or thereabouts.

II.

That plaintiff was thoroughly familiar with the conditions prevailing at the time and place alleged in the complaint as to the mode of fastening the eye-bolt to the deck and the condition of other appliances on the after part of the vessel, and if there were any risks and dangers which existed in connection with the use of said appliances in addition to the risks and dangers normally incident to the occupation of a seaman which are always assumed, plaintiff voluntarily assumed all of said risks and dangers, if any, and in particular the risk and danger of being struck by a rope by a bolt pulling out in the identical manner as that described in the complaint herein or otherwise, and that by reason of the premises defendants were and are relieved from liability for any injury alleged to have been suffered by plaintiff. [12]

III.

That at the time plaintiff was injured the Steamer "John C. Kirkpatrick" was made fast to the dock at San Pedro. That plaintiff had ample oppor-

tunity to leave the vessel's service if he considered that the vessel's construction or equipment or appliances or gear or any part of same were in any respects unseaworthy or unsafe, or that the place was a dangerous one in which to work, or if plaintiff did not wish to assume the risks and dangers, if any, that existed as have been hereinbefore mentioned. That by plaintiff's said failure to leave said vessel at said time he voluntarily assumed any and all risks which existed in connection with his work on board said vessel at the time and place as alleged in the complaint.

AND FURTHER ANSWERING THE ALLEGATIONS OF THE COMPLAINT HEREIN AND FOR A FIFTH AFFIRMATIVE AND FURTHER DEFENSE, THESE DEFENDANTS ALLEGE:

I.

That if plaintiff suffered any injuries or damages as alleged in said complaint or otherwise, said injuries and damage were caused by or contributed to plaintiff's negligence in the premises, and that plaintiff failed to take ordinary or any precaution for his own safety. That particularly, but not exclusively, plaintiff was negligent in the manner in which he caused the line to be set up in moving the cargo from the hatch preparatory to discharging cargo, especially with respect to plaintiff's failure to use a block in connection with the rope running through the eye-bolt. That he was further negligent in standing in the position which he did, where he would be most liable to be struck in case the bolt

should carry away. That defendants are further informed and believe and upon such information and belief allege [13] that plaintiff was injured in other and further respects than those herein particularly set out, and that such negligence caused or contributed to plaintiff's injuries and damage, if any.

WHEREFORE defendants pray that plaintiff take nothing by his said action and that defendants be hence dismissed with their costs of suit, and that they have such other and further relief as to the Court may seem just and proper in the premises.

FARNHAM P. GRIFFITHS,  
McCUTCHEN, OLNEY, MANNON &  
GREENE,

Attorneys for Defendants. [14]

State and Northern District of California,  
City and County of San Francisco,—ss.

G. W. Hendry, being duly sworn, deposes and says that he is an officer, to wit, the president of C. J. Hendry Company, a corporation, one of the defendants in the above-entitled action, and that he is duly informed and authorized in the premises; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters that he believes it to be true; that he makes this verification on behalf of the C. J. Hendry Company for said company and the other codefendants herein; that the sources of his information are reports given



to him by his attorneys based upon interviews by said attorneys with various witnesses in the case.

G. W. HENDRY.

Subscribed and sworn to before me this 22d day fo October, 1924.

[Notarial Seal]                      FRANK L. OWEN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Service of the within admitted and receipt of a copy is hereby admitted this 22 day of Oct., 1924.

S. J. HOGEVOLL.

[Endorsed]: Filed Oct. 22, 1924. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [15]

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(Title of Court and Cause.)

(ORDER DIRECTING VERDICT.)

Mr. Black moved the Court to direct the jury to return a verdict in favor of the defendants. After argument said motion being submitted and fully considered, it is ordered that said motion be and the same is hereby granted. [16]

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(Title of Court and Cause.)

JUDGMENT.

This cause having come on regularly for trial upon the 15th day of December, 1924, being a day in the November, 1924, term of said court, before the Court

and a jury of twelve men duly impaneled and sworn to try the issues joined herein. S. T. HogevoU, Esq., appearing as attorney for plaintiff and Harold A. Black, Esq., appearing as attorney for defendants; and the trial having been proceeded with on the 17th day of December, in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and the defendants having moved the Court to instruct the jury to return a verdict in their favor and the Court having granted said motion and the jury having returned the following verdict which was ordered recorded, namely: "We, the jury, find in favor of the defendants. John Whicher, Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action; that defendants go hereof without day and that said defendants do have and recover of and from said plaintiff their costs herein expended taxed at \$——.

Judgment entered December 17, 1924.

WALTER B. MALING,  
Clerk. [17]

In the District Court of the United States in and for  
the Northern District of California, Southern  
Division, at Law.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW MAHONEY et al.,

Defendants.

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above-entitled cause came on regularly for trial in the above-entitled court before the Honorable George M. Bourquin, Judge, on the 17th day of December, 1924, and that a jury was duly impaneled and sworn to try the case; S. T. Hogevoll, Esq., appearing at attorney for plaintiff, and Harold A. Black, Esq., representing Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, appearing as attorneys for defendants; whereupon the following witnesses were sworn and the following evidence was given, and no other evidence was given, and the following exceptions taken and allowed:

The COURT.—In the matter of the plea in the answer, limitation of liability, the Court is of the opinion that counsel may present his proofs, and it will be a matter for the jury to determine. I find nothing in the Jones Act which deprives the ship owner of the benefit of such defense. There are cases in the United States Supreme Court that sanc-

tion it being tried in an action of this sort. I think, however, it is largely a question for the Court. As I observe, however, the plea on the part of the defendant goes only to the extent of ownership. There is nothing about value?

Mr. BLACK.—No, your Honor.

The COURT.—Very well. It ought to be a simple matter of [18] proof, and, of course, the matter of privity or knowledge of the ship owner.

#### DEPOSITION OF HOLGER MARSK LAURITZEN, FOR PLAINTIFF.

The deposition of HOLGER MARSK LAURITZEN, a witness called by defendants, was introduced by the plaintiff, which deposition is as follows, sworn.

##### Direct Examination by Mr. BLACK.

My name is Holger Marsk Lauritzen; I am now winch-driver on the "John C. Kirkpatrick," and I was such on the vessel in August, 1924, when Oscar Spurgeon was injured. He was then second mate. I remember the accident. They were picking up a load from the hatch, No. 3, and he had a lead rope leading through the ring-bolt and out from the lead to the windlass, and they were heaving away aft; and the ring-bolt carried away; and Spurgeon was standing in the bight of it and got knocked up against the bitt. By "bight" I mean the angle in the rope. The rope led from the load. The lead was neither to right nor left, it was in straight line with the ring-bolt. The angle was on the starboard

(Deposition of Holger Marsk Lauritzen.)

side of the poop, right out through the lead. It was to the right from me. I was standing aft and looking forward. The line ran straight back from the load through the ring-bolt to the poop-deck and carried away to the right. It then went to the lead and then to the windlass. Spurgeon was standing just in the bight, or between the ring-bolt and the lead, in the angle of the rope. When the bolt pulled out it straightened out and he got swung out against the bitt. He did not use any block, the rope went straight through the ring-bolt. The second mate had charge of the work on the after deck; I do not know where the first mate was, the first mate was looking after both ends; he had charge of the whole thing, and the second mate had charge of this particular operation. I [19] do not know if I have ever seen an eye-bolt used like this one was used; I suppose it was used to get the best lead aft. I saw the bolt after it was pulled out, it was about six inches long. It was similar to the bolt later offered in evidence at the trial as Defendants' Exhibit 1. The bolt showed no breaks in it, it was pulled straight out of the deck. After the accident Spurgeon went with the vessel to San Francisco, and I guess he took his watch. I didn't think at the time that the injury was going to be serious. It was necessary to move the load, as they had to get the lumber out of the hatch and to do this, some laths on top of the hatches had to be moved. The load was about level with the poop-deck, they had quite a few loads already landed on the deck. The line which was pul-



(Deposition of Holger Marsk Lauritzen.)

ling the load was attached to the top of the load. The load was four or five feet high and about level with the poop-deck—the top of it. I was running the winches, and the load was held up by the falls, and was clear of the deck, and was clear of the rest of the load. I was slacking away until it got to the right place for landing.

Cross-examination by Mr. HOGEVOLL.

Q. You say you were the winch-driver?

A. Yes, sir.

Q. And you saw when this particular load was fastened? A. Yes, sir.

Q. You saw it when you began to pull it?

A. Yes, sir.

Q. There wasn't anything unusual there this time to other times, was there? A. Not that I know of.

Q. If this load had been fastened the same as the other loads you would have known it, would you not?

A. Yes.

Q. Sure?

A. Sure; it was the first load I picked up.

Q. You have been a winch-driver many, many times, haven't you? A. Yes, sir. [20]

Q. For several years? A. Yes, sir.

Q. And saw them use this particular bolt in many places the same as it was used that time; it was nothing unusual?

A. They usually lead it the way it will lead best.

Q. They usually lead it the way it will lead best, and do not stop to make an inquiry, Mr. Lauritzen,

(Deposition of Holger Marsk Lauritzen.)

if the ring-bolt is fastened enough; they take it for granted it is solid enough? A. Yes, sir.

Q. And at this time, fastened the way it was, you took it for granted it was like any other bolt on the ship? A. Yes, sir.

Q. And if it hadn't been the same way, the way it was generally done by other companies' ships, you would have known it, because you have been a winch-driver for many years? A. I guess so.

One of the longshoremen fastened the rope to the load, and when they said, "Go ahead," I started to pull, and it came out, and I did not pull any different from other times, and if the bolt had been as an ordinary strong bolt would be, it would have held.

I do not know the name of any other person around at that time. The ship was built in 1917. I saw no rotten condition of the ship in the hole where the bolt came out. I did not look for it, as I did not think that there would come anything out of it. I picked up the bolt and looked at it. I saw the wood in the grooves of the bolt. It did not seem to be fresh material, you cannot expect it to be exactly like new, because the water is bound to seep in and weaken it from 1917 to 1924, seven years.

Redirect Examination by Mr. BLACK.

Q. You never saw a bolt used like this before this time for that purpose, did you?

A. I could not say exactly that I have because I never,—I could not say that, not a bolt like that. There are so many different kinds of bolts on a ship.

(Deposition of Holger Marsk Lauritzen.)

I don't remember seeing one used like that for that purpose before.

Q. That is what I mean,—for that purpose. And, Mr. Lauritzen, you do not know definitely, do you, the condition of that wood around that bolt; you did not look to see it, did you?

A. No, but I know (I could not swear) but I remember I took up the bolt and said, "No wonder it pulled out," because I thought it was rather small. I thought it was rather small for the use to which it was put.

Defendants' Exhibit 1, a ring-bolt, was thereupon introduced in evidence.

#### TESTIMONY OF DR. ROBERT JONES, FOR PLAINTIFF.

Dr. ROBERT JONES, a witness called on behalf of the plaintiff, testified as follows (witness sworn).

##### Direct Examination.

I am a surgeon in the Public Health Service in the Marine Hospital, San Francisco. Spurgeon came to the hospital August 18, 1924, where he is still. I have an X-ray plate taken the day or about the time he came to the hospital. The reading shows a fracture of the transverse processes of the left second, third, and fourth lumbar vertebrae, and the fracture lines run through there (indicating), and they are comminuted fractures through there. That means they are crushed out; that is,



(Testimony of Dr. Robert Jones.)

they are divided into several fragments. You see them, one, two, three, on the left side. It is a public record, we want them (the plates) back. On clinical examination we found that the muscles on the left side of the lumbar region were rigid, were spastic, were held rigid. He is at present in a plaster of paris jacket. I cannot tell if his condition is permanent. I do not think it will be a matter of years until he can find work, or that he will be permanently disabled, but I cannot tell. Spurgeon is forty-seven years old. I expect [22] to keep him in that plaster cast about six weeks more. He is up and around now.

Cross-examination by Mr. BLACK.

The transverse processes of the lumbar vertebrae are the bony processes which run out from the side of the vertebrae, and they are for attachments of muscles and ligaments. The injury has not affected the spinal cord, proper, nor has it broken the backbone, proper. It is just a little bony process that projects out of the side that has been chipped off. I have taken no X-ray picture of this patient since his first admission to the hospital. Whether there has been a union of the broken fragments would be demonstrable only by another X-ray. From the time of the accident in such cases a man should be able to work in three months. I do not know if this case is different from a normal case. I see no indication in this case of permanent in-

(Testimony of Oscar Spurgeon.)

jury. These bones that were broken are not the circular part of the backbone.

The X-ray plate was left in court as an exhibit.

### TESTIMONY OF OSCAR SPORGEON, FOR PLAINTIFF.

OSCAR SPORGEON, the plaintiff, testified as follows (sworn).

I am the plaintiff. On August 14th, 1924, I was in San Pedro, California, I was second mate on the "John C. Kirkpatrick." I have been a mariner for thirty years. I am now forty-seven. I was first a seaman, ordinary seaman, on the Revenue Cutter "Bear," then next on the battleship "Oregon" during the Spanish-American war, then next revenue cutter service, next an officer on merchant ships, and during the world war a lieutenant, senior, in the United States Navy, and then officer and master of merchant ships since 1919. That is all I have done. During the four or five last years I have made on an average, somewhere around twenty-five hundred dollars a year. On this particular day we were busy discharging [23] lumber, and about eleven o'clock in the morning on my end of the ship, the chief officer, Ole Grande, came to me and said, "Well, this afternoon, Mr. Spurgeon, you will have the longshoremen remove the laths from the hatch aft and amidships." We had about three carloads of laths, covering fore and aft midships of the hatch. These had to be

(Testimony of Oscar Spurgeon.)

moved in order to get about twelve thousand feet of lumber out in the morning in another place, while the men were there. When I got the order, it looked peculiar to me, because the middle was over the head, nearly level with the poop-deck, and both sides of the deck were empty. It is impolite for a junior officer to ask reasons of the senior officer, or why, so I said, "All right, sir." I walked aft and looked the situation over. I looked for what manner, or means, or ways they would have to get the laths out. I looked around there. The ropes that they used to pull the laths out did not look any too good to me. In fact they were old lines, three and a half inch lines, having been used for boom lifts before, and they looked pretty well faded to me, and I looked around for the leads to the winch. I haven't been in such a ship; I have been in a good many ships; I have never seen anything like it. She was one of those war-time-built vessels, and the winch—if you would understand, sir, what it means to be level with the keel, the winch on the particular ship was level with the keel, turning fore and aft, and to get down to that kind of winch you must have a way to lead a rope to that winch. I looked around, saw two ring-bolts on either side of the winch.

Q. The ring-bolt that you saw, is that something like this one?

A. Exactly, sir, something like that.

Q. Exactly?

A. Yes, sir. In fact they used those ring-bolts

(Testimony of Oscar Spurgeon.)

loading. I was busy, and I walked aft again; the chief [24] officer and third officer were aft using them particular ring-bolts loading the ship. We had only our own crew working, no stevedores. We were using them—

Q. Just a minute. Do we understand you to say that the ring-bolt that you now mentioned was used in the same way as you had used it by everybody on the ship?

A. Yes, sir; but when I looked them over, the ring-bolt looked all right to me, but the ropes didn't look all right. Therefore I wanted a block, because if you go to work and have a poor looking line, and you have to reeve it through an iron ring, the rope is going to break, because it will naturally wear out. I looked around the ship, and I had the order to remove those laths. I looked around for what you call a snatch block or a leading block. It is a block—you can trip it any time you want to.

Q. They also call it a snatch-block?

A. Yes, sir, that is the proper name for it. After twelve o'clock I went to Mr. Grande and I said, "Are there any snatch-blocks on the ship? I can't find any." He said he would be blessed if he knowed; he hadn't seen any. He said, "You might as well go forward to the store-room and see if there is any." I walked forward a little after one o'clock; I had the longshoremen piling up the laths, ready. I walked forward and looked around; I couldn't find any. When I came out of the store-room, there was a sailorman there that had been for



(Testimony of Oscar Spurgeon.)

some time on the ship. I walked toward him and said, "Have you seen any blocks on the ship?" He said, "I haven't. What are you going to do with them?" I said, "We have to move those laths out, and we have to have something for rope to lead out." He said, "Oh, we never use them. We have been getting along without them." All right. I went out and said, "Now, men, I don't like these ropes. Build small loads." Well, I was [25] doing famously well. Everything was nice and smooth. But there was one particular place on the ship, right near the forward part of the winch, within one foot of that winch. There was a great big 24x24 Sampson post, and it was a very peculiar thing to have a lot of laths in there. Like the winch would be right here and there was a place, I should say about ten feet between that point and the winch, right in front of the machinery, and the machinery revolved around this way, and the load had to come this way, you see. Now that particular ring-bolt was just there, and to get that load there—I looked over and decided I would let this place out, because there was plenty of room at the side of those laths. It was not necessary to go to work—it would waste time and a lot of trouble to get that load in there, and I commenced to place that load, the next load, and the stack I had already planned, told the longshoremen to pile the laths to the side. When the chief officer stepped around—he didn't say anything to me—

Q. That is Mr. Grande?

(Testimony of Oscar Spurgeon.)

A. Yes, sir. He said to the stevedores, "Why do you put in those laths on the side for?" "Oh, that was Mr. Spurgeon's orders." "Well," he said, "why are you putting them there for?" I said, "Mr. Grande, you have plenty of room on the side, and to place those laths there, it is very awkward." He said—he didn't speak directly to me, but there was a load already built, and he said, "Put that load right there, in the forward part of that winch, in that hole." I didn't say a word to the chief mate when he gave that order. I was standing over on the ship's deck. I looked up to the winch-driver; he was facing aft, and I said, "Charley, that load goes over there." The load was going aft then. A man was at the winch, heaving off, and I kind of looking around following the load as it went. When [26] she was nearly there, the man couldn't reach the lever of the steamer himself. He wasn't aware of what to do, but it is one of those levers that you have to shove and pull. I went by the load and reached the lever to shut the steam off. When I did that, that's all I remember for a while. I picked myself up across the bits. When I came to, the winch-driver had stopped the operation of the winch and just dropped the load where it was, and I went aft to see what had happened. There I saw the bolt. That bolt pulled right clean out of the deck, and was laying still on the deck there.

Q. What was the difference in this particular bolt and other bolts that you have seen on ships

(Testimony of Oscar Spurgeon.)

used for that particular purpose? What is the difference in the fastening?

A. The difference in fastening—seamen, sir, do not use that kind of bolts on a ship for any purpose whatsoever, for heaving or lashing or holding, because that bolt is unsafe to be on board of a ship. I have seen this kind of bolt in my experience for life-boat lashing. You know, life-boats are secured on decks, and they have what you call gripes to hold the boat down. I have seen this kind of bolts put in these screw-eye bolts, I would call them with a ring like that, of a smaller size, and by the ship rolling and moving and shaking they won't hold. They come out. In fact I was some years ago in the steamer "Charles Christenson," and we lost our life-boats in a southwesterly swell just on account of a bolt like that. The bolts that are used for that purpose have no threads whatever. It is a straight bolt. The Lloyd insurance calls for a straight bolt, running through the wood on the beam, with a square iron a quarter on an inch plate, and the bolt must be crimped back. So there is no way of shaking or working out. That is the proper way for a bolt to be fastened on board a ship. [27] I know what a nut and a washer is and there was no such thing on this bolt. The bolt was something like this one (indicating the exhibit). It was a three-quarter inch bolt. A nut would not be any good on that bolt.

I can't see quite as good as before the accident. I have now been in the hospital four months, and

(Testimony of Oscar Spurgeon.)

I am wearing a plaster cast. I had good health before the accident, and was never sick a day. I limped around for a while the day I got hurt, but I found that I couldn't lay down or sit up. The angle where the load was, was about forty degrees.

The COURT.—Tell us about how far from the winch.

A. The angle was about the distance, the length of the distance between that bolt and that particular angle was almost fifteen feet. The angle was between thirty and forty-five degrees.

As the winch pulled up the load I was struck when I went over to shut the steam off the winch. The load was a very light load, having about twenty-five bundles of laths, and a bundle of laths weighs about forty pounds in the summer time, that is the average weight. That would make a thousand pounds. Very slight load for a steamer. I do not know, if the bolt was pulled out sidewise or not, but when I looked I saw no breakage of wood whatever in the plank there, but just sufficient wood—I am referring to along the bolt, the wood that was there had not even a splinter there. It was just like it slid out easy. Where the bolt was, was a place that would expose it to the elements, and especially to fresh water running out of the winch.

Cross-examination by Mr. BLACK.

Mr. BLACK.—Mr. Spurgeon, I doubt if the jury has a very clear conception of just what happened in this case, and with your permission I will draw



(Testimony of Oscar Spurgeon.)

a rough plan and you correct me if it is not [28] substantially correct.

Mr. HOGEVOLL.—Will you be so good as to put it closer where he can see.

The COURT.—Proceed, Counsel.

Q. Now, Mr. Spurgeon, assuming this is the rear end of the ship, your poop-deck breaks off about there? A. Yes, that is all right.

Q. That is so far. The hatch is about here, is that correct? A. Yes.

Q. Now, your two spools on your winch are located running in a line with the keel? A. Yes.

Q. Your winch is located here? A. Yes.

Q. Now, the ring-bolt was located immediately to the starboard side of that winch, was it?

A. Show it further down; put it about two feet further down, lower down.

Q. Your load was about the center of the square of the hatch? A. About that.

Q. It was a load of laths, almost a square load, wasn't it?

A. Well, laths don't come aboard in square loads, they come in a sling.

Q. That is more approximately, isn't that so? Now, your booms were out on an angle over the load?

A. Yes, one boom is generally trimmed looking to the wharf, and one for the ship.

Q. And the load was suspended in the fall of the boom? A. Yes.

Q. You hooked on your line, on top of the load?

(Testimony of Oscar Spurgeon.)

A. On top of the load, that's the upper part of the sling, that's where the line is.

Q. You ran the line through this ring-bolt?

A. Yes, [29] sir.

Q. Now, over here is a boom-rest, isn't that correct?

A. Yes, but by the boom-rest is another ring-bolt, two ring-bolts on each side.

Q. There is a ring-bolt there?

A. Yes, there is a ring-bolt there, too.

Q. This is a piece of square timber, on which your boom is, when the boom is shipped, it rests on this block? A. Yes, that's where she lays.

Q. Now, over here, Mr. Spurgeon, is your rolling chock, isn't that correct? A. Further out.

Q. Like this? A. Near it, yes.

Q. Over here?

A. Yes, that's about where that will be.

Q. Then your line ran through—

A. (Interrupting.) Here, cast around there, around the—

Q. (Interrupting.) And thence around the drum? A. Yes.

Q. And while in the process of heaving this lead back, this ring-bolt carried away, as you were standing there?

A. Yes, close to the rope, to get hold of this lever.

Q. And the rope probably threw you against the boom rest?

A. No, further on there is a set of bitts, to make the line fast.

(Testimony of Oscar Spurgeon.)

Q. The bitts are about two feet high?     A. No.

Q. There is one set of bitts—

A. (Interrupting.) No, a set of bitts alongside the winch.

The COURT.—I couldn't say whether a difference of an inch or a foot is going to cut any particular difference.

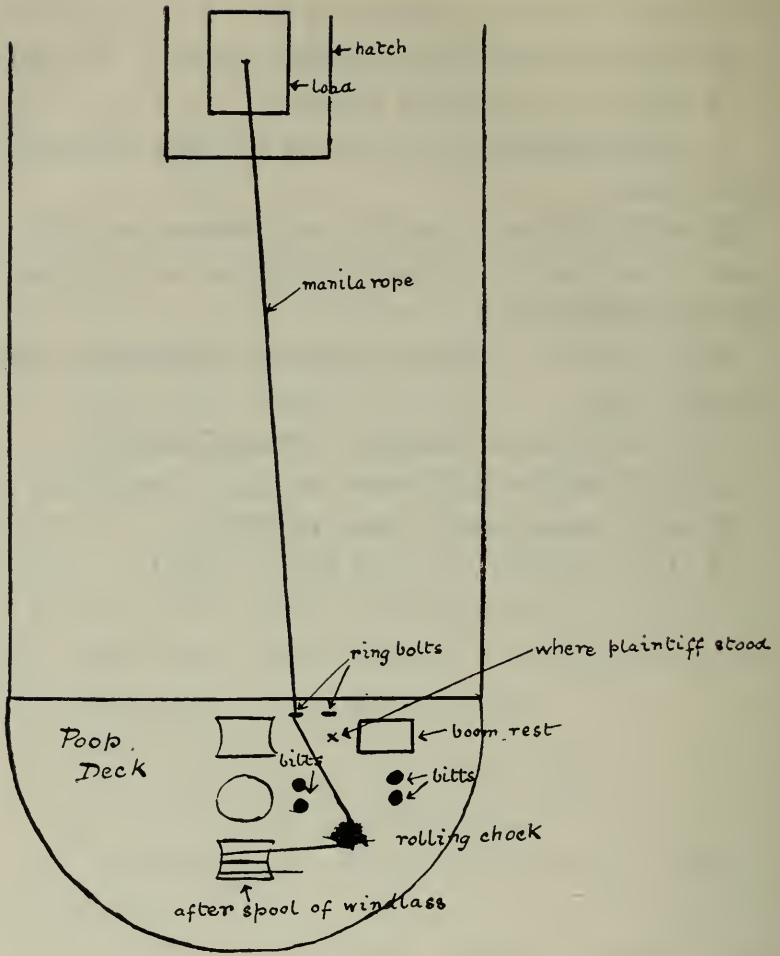
Mr. BLACK.—It may become materially important later.

The COURT.—I doubt it. Proceed briefly.

Mr. BLACK.—Q. Where are the other bitts?

A. Just about where your chalk is.

Q. About there?     A. Yes, sir. [30]



Rough Sketch of  
 Stmr. "John C Kirkpatrick"

Showing parts of vessel discussed  
 at the trial.

(Not in scale)

Spurgeon v. Mahony et al.

(Testimony of Oscar Spurgeon.)

Q. It was across these bitts that you were thrown, when the line carried away?     A. Yes, sir.

(A copy of said sketch is here attached for convenience of reference.)

I was in charge of the operations. I looked for a snatch-block first under the poop-deck, there is a store-room there, there is a locker where they keep the tools. I did not find any there. I asked a man, a sailor, if he hadn't seen any. The chief officer told me that he didn't know that there was any on board the ship or not.

Q. This ring-bolt is screwed right into the deck, isn't it?

A. I do not know that. If I had known that, I never would have put a rope through, a rope or a block.

I did not take any notice, if there was a metal plate where this bolt was screwed into the deck. I am not sure, if there was a metal plate, because I did not look for any, because any makes of ring-bolt are all right; when you are working around machinery, all bolts are supposed to be all right. I did not look for any metal plate as it was not my duty to reeve any line. I am not a sailor and do not perform that work, but it was my duty to change any equipment that I thought was not properly rigged up. I would give instructions that it should be done the other way, if it is in my line of duty, or it is possible for me to do so.

I have been going to sea for thirty-one years.



(Testimony of Oscar Spurgeon.)

We had carried about a dozen loads of laths before the accident but not when this bolt was used; we had reeved through the other bolt first. When the accident happened, it was the first time we used that bolt. By other bolt, I mean other ring-bolt, that was of the same construction. We changed to this one because we had to be closer in, in order to get the load in this particular [32] place.

Q. Now, couldn't you direct the disposition of this load in a 'thwartships direction by the use of the falls?

A. No, sir, because the falls were trimmed towards the center of the hatch; they were not trimmed towards that hole the mate said to put it in, and it does not pay to swing the cargo booms to put it in that hole where he wanted it. We had to do it with the lines. It would be possible to run a line from the bitts on this side (indicating) with a snatch-block, if we were to go to a lot of time, but it would take from 15 to 30 minutes to rig it up, and it does not pay to do that for one load, and if I had known that the chief officer wanted that load in there I would have taken the trouble to rig that particular thing up, but he said, "You people are too slow. Put that load in there." We had no time to rig up anything. I could have taken that load out, if I had taken time, by myself.

By running this line through this bolt, I was subjecting the rope to quite a lot of wear, and if the rope carried away, it would have hurt the men back of the hatch. I nevertheless ran it through, be-

(Testimony of Oscar Spurgeon.)

cause I could not find any block, and I warned the men not to build big loads for that reason. I have never seen that kind of ring-bolts used screwed down there, the only place where I have seen them is on ship's fore-castle heads. On this kind of wooden schooners, they have wooden gratings made; when they go out to sea they carry their mooring lines under that grating, and they put in a couple of bolts of a smaller size than that, just to lash those mooring lines down, so that they wouldn't jump overboard, and that is the only place I have seen those bolts used, and if it is necessary they use them for lashing down booms, and I have not seen them used for line stoppers, not that kind of [33] bolt, that wouldn't hold.

The heavy rolling chock is built right into the ship, it was properly secured in good working order, and so solid that you would have to pull out the deck in order to pull it out. I do not know if the bits were of wood or steel, but they were fastened to the ship, of good solid construction.

A longshoreman was at that time operating the windlass, or capstan. The cargo winch is about amidships. The winch-driver was slacking away and pays out while the other man takes in the slack. A stevedore took the rope around the gipsy head of the winch, and he was holding on to it as the winch was swinging around. He was aft, at the drum head. I was standing on this side close to the ring-bolt when this load was pulled.

(Testimony of Oscar Spurgeon.)

I first went to the hospital on the 18th of August, at 5 P. M. There they cleaned my system, they strapped my back and put supports on both sides of me. I stood the bridge watch going up from San Pedro to San Francisco for the reason that I could not lay in my bunk, and I could not sit down.

(Witness excused.)

TESTIMONY OF FRANK H. AINSWORTH,  
FOR PLAINTIFF.

FRANK H. AINSWORTH, a witness called by the plaintiff, testified as follows (sworn).

Direct Examination.

I am a captain, and I am now employed by the United States Veterans Bureau. I have had a chance to observe the way they put in ring-bolts in ships. The ring-bolt, Defendants' Exhibit No. 1, is what they call a ring-bolt with a lag screw, and it is used for various purposes on ships, to secure articles. One could not tell by looking at it, except from below, if this bolt was clinched under deck. If a person sees a bolt of that size on the deck, they would use it for the purpose for which it would be [34] necessary to use a bolt of that size. There are several methods used in order to make a bolt solid so it will not come out or work loose, one by riveting it over a washer, one by putting a nut over a washer and one by putting a key through it, over a washer. That would make a good solid method. I imagine the wood around such a bolt used for six or seven years would become soft. If hit by lumber

(Testimony of Frank H. Ainsworth.)

from time to time it would tend to loosen it, and when loosened it would tend to come out. If a rope is put through it this would have a tendency to pull the bolt in the direction of the strain. This would have no effect on the threads but it would make it loose.

The COURT.—There is no evidence of the bolt having been hit by lumber, and if the testimony is not connected up, it will be stricken out.

Cross-examination by Mr. BLACK.

I have seen bolts of this kind used for lashing booms, very frequently, it is common construction. The bolt is quite satisfactory for lashing cargo or booms to the deck. No bolts are put in for the purpose of running lines through it. I have seen them used with snatch-blocks without a plate. If you have a snatch-block any bolt may be used. Bolts used for that purpose are usually secured underneath. Very seldom there is any square plate, or a large plate, on the deck around such a bolt; there is sometimes a little collar, or a little washer, an inch and a half or two inches from the bolt to the outside of the washer. It is a common practice, but not good practice to run a line through a ring-bolt of this kind. It is not good practice because it tends to wear the haul and make heavier heaving.

Q. Wouldn't any experienced licensed man be expected to know that by using a bolt in that method he was subjecting both [35] the rope and the bolt itself to a larger strain than it was intended to bear?



(Testimony of Frank H. Ainsworth.)

A. He would know the degree of the angle of the lead. If it was a slight angle it wouldn't be so much difference. If it was an acute angle, it would be very difficult. I would deem the angle that the plaintiff had to draw in this case an obtuse angle, more than 90 degrees, according to your diagram. It is a long way from a straight pull, however. The angle is about 120 degrees, I should judge. The strain would depend upon the load entirely, but more force would be exerted on the ring-bolt than would be the case with a straight pull.

(Witness excused.)

TESTIMONY OF JOHN JOSEPH MORIARITY,  
FOR PLAINTIFF.

JOHN JOSEPH MORIARITY, a witness called on the part of the plaintiff, testified as follows (sworn).

Direct Examination.

I am a marine and stationery engineer, and have been such since 1882. I have had occasion to observe how bolts are put on the decks of ships. A bolt with a surface like that is merely screwed in. It is a galvanized lag screw. A man on the deck cannot tell how it is fastened below. There are several ways to fasten such a bolt, some have a shoulder, and you screw them in, underneath they sometimes put a washer or a grummet to prevent leakage. Evidently there was no washer on that bolt. The very fact that it has a conical screw on it shows that it was merely intended to be screwed



(Testimony of John Joseph Moriarity.)

m. I cannot say if this would be a safe way of screwing in the bolt. A strain might be horizontal or vertical and it might be a compound strain. If it had been used on any previous occasion there would be a tendency to loosen the threads which are very small. I cannot understand at all that [36] that was used for any strain. A bolt like that, if the deck is wet, with such awful small threads wouldn't have any hold at all, but this cannot be told from the way it was screwed in. Judging from the size of it I would moor the courtroom to it. Judging from the size of it, it would stand an awful strain, that is a  $\frac{7}{8}$ , I think.

Cross-examination by Mr. BLACK.

I am not a captain, but I rate as an army captain just the same. I have seen bolts of this kind used to lash down booms with on deck. I do not know if there is any indication from the way it is constructed to show that it was not intended to have lines through it. If it was available for that—time is a factor on this class of vessels, and you make it fast to anything. You certainly would—

Q. If you had a load of lumber to forward and had to move it back, you wouldn't put it on to anything you found laying around there?

A. If I didn't have a block, I would have to do the next best thing, and even with a block with that it wouldn't be much different, any more than the friction of a rope.

Q. Wouldn't the elimination or flattening out of

(Testimony of John Joseph Moriarity.)

that angle by the use of a snatch-block tend to reduce the strain also?

A. There is an iron hook on a snatch-block, that would tend to loosen the screw at least.

The COURT.—The jury can see that a hook would tend to flatten out the angle and this would tend to reduce the strain.

The WITNESS.—I would not consider it good seamanship to use a bolt without using a block.

(Witness excused.)

#### DEPOSITION OF D. McFADDEN, FOR PLAINTIFF.

The deposition of D. McFADDEN, a witness for the plaintiff, being thereupon introduced in evidence, [37] which was as follows (the witness was sworn).

##### Direct Examination by Mr. BEUM.

My name is D. McFadden; I am a stevedore by occupation. On August 14th, 1924, on the date of the accident, I was on the "John C. Kirkpatrick." We were discharging lumber. The second mate superintended the job. We were then removing laths from the wing to midships, so we could get the lumber that was underneath the laths. We moved it to amidships. These loads were slung up and picked up by the ship's gear, and there was a rope with a hook, hooked on to the ship's gear back through a ring, around the bitt to the winch or capstan. These falls come together and there is a chain of about three inches that is hooked on to

(Deposition of D. McFadden.)

the end of the load. The falls are attached to the winches, they run to the hook and pick up the load. The line of the rope that was used to pull back the laths is running through the deck ring and around the bitt to the capstan. Two sailors were operating the gear at the time. I saw Spurgeon standing right there near the boom rest. When the accident happened we had been working a half an hour in moving laths. He was injured this way: This load was at about the after hatch. When this ring-bolt pulled out of the deck it compelled this rope to come into a straight line. There was about a three-foot turn from the ring-bolt to the bitt, and the second mate was hit and thrown against the boom rest. When the ring-bolt was pulled out, the line straightened and naturally hit the second mate, knocking him against the boom rest. The load weighed approximately fifteen hundred pounds. The load was attached to the rope leading to the capstan and it was attached to the ship's gear. The winch-driver held the load in that position. At the capstan were two sailors; they were the means of getting the load back with the capstan. They were pulling on the [38] loading line with the capstan. I saw the bolt after it was pulled out, immediately after the accident, it was a lag screw, four to six inches long. It was jerked out and had been fastened to the deck. When plaintiff was struck, he rolled against the rail of the ship, but picked himself up and continued working the rest of the day. In the meantime the first mate had

(Deposition of D. McFadden.)

come around, and cursed and swore the second mate because the lumber was not coming fast enough.

Cross-examination by Mr. BLACK.

The companion way is clear of the capstan, well over to the starboard side of the vessel. I am *positive* that the ring-bolt is not practically in front of the capstan. It is possible with a load with the gear in this position that I have described to bring a load practically amidships. The winch-driver has full control of the load by letting the starboard fall and slack away on the starboard fall and take up on your part it is bound to go over, it has got to, the rope can't hold it. The ring-bolt was about half way from the midships to the starboard side, about that I am positive. I am not positive how far the ring-bolt was from the capstan. There are two sets of bitts but not of the same construction. I am positive that there was no lead with a rolling part in it. Where the rope goes around to the capstan there are two straight immovable bitts. I am sure that the rope went around the bitts and not around the leads or chock with a rolling part. I was standing on the level of the poop-deck. There were no snatch-blocks used in connection with this ring-bolt. Two sailors were in charge and they were taking orders from the second mate. The screw was not rusty. The load of laths contained approximately forty bundles of laths; it was about six feet high and five feet wide, and about four feet long. [39]



(Deposition of D. McFadden.)

Redirect Examination by Mr. BEUM.

I do not know of my own knowledge who rigged that gear.

(Witness excused.)

DEPOSITION OF ANDREW AEZER, FOR  
PLAINTIFF.

The deposition of ANDREW AEZER, a witness called on behalf of the plaintiff, was introduced by plaintiff, which testimony is as follows (witness sworn).

Direct Examination by Mr. BEUM.

My name is Andrew Aezer; I live at 383 Ninth Street, San Pedro. I am a shipwright, and have been working in this harbor (San Pedro) for the last four years. I was called to work on the "John C. Kirkpatrick" some time in August, 1924. I was called to do joiner work in the pilot-house. A ring-bolt was pulled out and they told me to fix it. The second mate who was hurt gave it to me. He said the ring-bolt pulled out and hit him in the back. I saw the bolt, it was a seven-eighths by seven inches long ring-bolt. It was a lag-bolt without any nut on the end; I lengthened it from seven to seventeen inches and put a nut on the end and put it back in the hole. This lag-bolt would stand a strain of two tons, that is, if there was a weight of two tons hanging on the falls it would hold that. If the winchman is pulling against this load which is attached to the fall that would not increase the strain on the ring-bolt. That ring-bolt will stand two tons,



(Deposition of Andrew Aezer.)

where a bolt is run through the deck and through the beam with a nut on it, it would stand a greater strain, even one ton more.

Cross-examination by Mr. BLACK.

Of my own knowledge, I do not know how this bolt was used. A lag-bolt is a bolt that merely screws on the deck. This bolt was galvanized, and not rusty. I spliced the bolt and made it seventeen inches long. I never saw the captain, only the mate who gave [40] me the ring-bolt. I have often been on the "John C. Kirkpatrick." The ring-bolt was about eight feet from the center of the vessel to the starboard side. The beam of the ship was approximately twelve by twelve (12 by 12). The width of the vessel was about thirty-eight feet deep. I am sure that the ring-bolt was located not more than six feet from the capstan. The gypsy or capstan is about the center of the ship. I did notice the hole where the ring-bolt had pulled out, but I did not notice if it had been pulled out in a sidewise direction. The wood did not indicate that it had been torn, and it was perfectly sound and there was no indication of rottenness. The bolt is screwed into the deck and there is no chance of any leakage, and no water could get in down over that screw. I see that kind of bolt every day; it is used for lashing the booms or for a stop for the lines. Such a bolt is not used for hoisting cargo around the deck, it is not intended for that, they should not use it for that purpose.

(Deposition of Andrew Aezer.)

Redirect Examination by Mr. BEUM.

Water cannot seep down where this bolt was, not even if water stands there permanently.

Recross-examination by Mr. BLACK.

There is a curve in the deck where the bolt is, so no water can remain there, the water would drain to the other side.

(Witness excused.)

TESTIMONY OF MRS. OSCAR SPORGEON,  
FOR PLAINTIFF.

Mrs. OSCAR SPORGEON, a witness on behalf of the plaintiff, testified (sworn).

I am the wife of the plaintiff, we have been married fourteen years, and I have known him twenty-one years. He has never been sick a day previous to the accident. I receive from him about \$2500.00 a year.

(Witness excused.)

Mr. HOGEVOLL.—We rest, your Honor.

Plaintiff rests. [41]

Thereupon the defendants introduced the following testimony:

TESTIMONY OF INWALD HALVORSEN, FOR  
DEFENDANTS.

INWALD HALVORSEN, a witness called on the part of the defendants, testified as follows (sworn).

Direct Examination.

I am a master mariner, and have been such since

(Testimony of Inwald Halvorsen.)

1914. I am now master of the "John C. Kirkpatrick." I have been such a little over one year. I was her master on August 14, 1924. I remember Oscar Spurgeon. He was the second officer. He had been second officer when the accident happened about two months. The vessel was discharging lumber at San Pedro when the accident occurred. I was not then on the ship, I came two or three hours after. I saw Spurgeon when I came on board the vessel, and I made out a hospital certificate that he demanded. After that he came back to the vessel, and proceeded with us to San Francisco. I saw the ring-bolt that pulled out of the deck. It was of the same kind as the one introduced in evidence. That is the place where the ring-bolt pulled out (pointing to the black-board). The purpose of that ring-bolt is especially for lashing down of commodities, such as booms, and it is used for stopping lines, and in rare cases I might use that a couple of times with a snatch-block. I would say you could use it for discharging a load or two, like he did. It is not intended to be used in connection with handling lines at all. I don't presume it was put in the ship for that purpose. I have never seen it used for that purpose on board the ship. This was the first time I had seen it so used. I am familiar with the usual construction of steam schooners as to this sort of equipment on vessels of the type of "John C. Kirkpatrick." A bolt of this kind is a common thing on board such vessels. It is [42] used for lashing down of booms, for stopping of

(Testimony of Inwald Halvorsen.)

lines, that is what it in most instances is used for. I was present most all the time when the cargo was being loaded on the back of the ship. Neither this ring-bolt, nor any like it, was used in connection with the loading of that cargo. Looking at the diagram and the way the lines were run on this occasion, I do not consider that this was a proper way to accomplish the result desired. The reason is that it is not safe, for the safety of the men that are handling it, or the strain on the rope, and some time you are liable to break it. If you had a snatch-block on a bolt, that would eliminate a certain amount of the strain on the rope itself. The cargo can be moved without the use of the ring-bolt. Other methods can be used to move the cargo back, that will accomplish the same result as speedily and effectively. You can take it through the lead, that is to the gypsy head, and you can pass it around; there is two leads, one on each side, especially put on the deck for that purpose; these leads are built right into the deck and by using them you can put the cargo on any part of the ship you want. By the use of leads and falls you can put it practically amidships. There were snatch-blocks on the ship at the time. We have what we call boatswain's locker, and we generally keep there such as is used in the handling of cargo, both forward and aft. We have a locker aft and we have a locker forward. We always find a block and such things to be used in them. We keep them there for safekeeping when we are not using them.



(Testimony of Inwald Halvorsen.)

I know absolutely there was a block on board at that time. We had three blocks, all in good working order. There was no general practice obtaining on the ship for the use of this equipment without a snatch-block. This was the first time in my experience that I saw a hook-up of this kind. The man stood on the wrong [43] side of the rope. In case it should carry away, he would get the worst of it.

Cross-examination by Mr. HOGEVOLL.

If the bolt had had a nut below, or was clamped below, I am sure that it would have been more safe, perfectly safe so far as the bolt was concerned. I never told Spurgeon that this bolt was not clamped below the deck, because these bolts were never used for that purpose. I knew it was not clamped, and I knew it was screwed down the deck, I knew that by looking at the bolt before the accident, but I did not tell Spurgeon. I did not tell Spurgeon where he could find the snatch-blocks. They were in the locker and were not locked up. I presume that the chief officer would look out for that.

(Witness excused.)

#### TESTIMONY OF H. CLEAVER, FOR DEFENDANTS.

H. CLEAVER, a witness called on the part of the defendants, testified as follows (sworn).

Direct Examination.

I am now the chief mate on the "Santa Ana," and have been going to sea for seventeen years.



(Testimony of H. Cleaver.)

I have served two years as chief and second mate on the "John C. Kirkpatrick"; that was in 1922 and 1923. I recall these ring-bolts located in the forward end of the poop-deck; they were there for the purpose of lashing the boom, and I never saw them used for any other purpose. I never saw them used in connection with snatch-blocks or otherwise, in moving cargo around the deck. I had charge of the operations of discharging cargo on the vessel for thirteen months, and nearly every trip we moved cargo from the forward part of the ship to the poop-deck. We had fair leads for that purpose, stationary on the vessel. The rolling iron-chock is stationary on the ship and to take it out you would have to take practically the whole deck. [44] It is easy and simple to move the cargo by that means alone. That is the way we did it before. I would not run a line through that ring-bolt and around this lead, over to the windlass, nor would I see other men do it either. It would not be safe, the rope will give way, if there is no fair lead, if there is no snatch-block in the ring-bolt. I have not seen the equipment on several vessels of this character. These bolts are commonly used on steam schooners; screwed to the deck, and used to lash booms with, and for lines and so forth, to keep lines from washing overboard. Life-boats are lashed down with it.

Cross-examination by Mr. HOGEVOLL.

Q. Will you come over here and tell us where you would put this particular line?

(Testimony of H. Cleaver.)

A. We would have put that line on this stationary fair lead here, and then out there, that is forward; we would connect this line up here, and the gear would be set this way. I never used this ring-bolt, I never had to use it. There was two ring-bolts, one there and one there (indicating). I don't know as there was any difference in the way they were fastened below the deck; during my time I never was interested in that, because they were not used for the purpose of loading cargo. I used them for the purpose of lashing the booms—this particular bolt. I did not see the bolt come up, I do not know if it came up straight or sideways. I don't know anything about the accident.

(Witness excused.)

TESTIMONY OF CHESTER J. LANCASTER,  
FOR DEFENDANTS.

CHESTER J. LANCASTER, a witness called by the defendants, testified as follows (sworn).

Direct Examination.

I am master mariner, I have been such for twenty-two years. I am now on the steamer "Santa Inez." I have seen the "John C. Kirkpatrick"; I made an inspection of the after deck of that vessel. [45] I have seen the ring-bolt on the forward part of the poop-deck. They were placed there to lash the old booms down with. That is absolutely proper and usual construction on vessels of that sort. It is proper and customary to put

(Testimony of Chester J. Lancaster.)

lag screws in for that purpose. Time and again I have seen that done in steam schooners. It shows very poor seamanship to move a load of laths from the forward part of the vessel by running a line through that ring-bolt and then around the lead, and then around the windlass. By leading a "rope yarn over a nail" there is caused so much friction in the ring-bolt, if the line carried away, not only would it be endangering the winch-driver on the after-deck, but the line on the rebound would kill somebody at the winch and the cable. The ring-bolts were placed there to lash the boom down, the old booms, before the new booms were put on; they were so long they had to build a chock to rest the boom on and rest it over the bitts, necessitating an entirely new deck arrangement for lashing booms. From the appearance and position of these bolts it would be apparent to anybody that knows seamanship that they are not to be used for moving cargo, because they are not proper bolts in deck construction. Bolts intended for the purpose of moving cargo either have an immense washer, or an iron plate countersunk into the wooden deck, and that would be visible from an inspection from the top of the ship. I have never seen any other construction for bolts designed for such a purpose. With the equipment on the "John C. Kirkpatrick," if I had had that job to do I would have moved the cargo from the forward part of the vessel directly through a permanent fair lead that is fastened, that is, secured on the deck for that purpose.

(Testimony of Chester J. Lancaster.)

By using either lead on the port side or starboard side I could have moved the cargo to any part of the vessel that I wanted to. This method [46] would be simplicity itself. That would be immediately apparent, not only to a person holding a license but also to a seaman.

Cross-examination by Mr. HOGEVOLL.

From the looks of it, I would not expect this bolt to give way when changing a load of laths weighing fifteen hundred pounds from the hatch aft.

(Witness excused.)

#### TESTIMONY OF ARCHIBALD L. BECKER, FOR DEFENDANTS.

ARCHIBALD L. BECKER, a witness for the defendants, testified as follows (sworn).

##### Direct Examination.

I am consulting engineer at the present time. I have worked in the shipbuilding business since 1900, until about four years ago. I know the normal and proper equipment on steam schooners. I have constructed them. A lag screw is not a common equipment on such schooners. It is only used on vessels where you have a small amount of tension on the part, like for lashing. You never use it where there is an opportunity of a transverse pull, unless it is used in connection with a pie-plate bolt. It is permissible to use such a bolt for lashing, providing the lashing attaches to the bolt in



(Testimony of Archibald L. Becker.)

such a way that you have a strain along the axis of the bolt, never have a transverse strain, that is, of any magnitude. I consider a ship properly equipped when it has lag screws for the purpose of lashing down the booms. I have inspected the "John C. Kirkpatrick." I found ring-bolts of such nature there; they are placed in pairs, and the impression I got of them was that they were there to secure the booms at some previous time. I noticed that they had put a new chock on the deck, and had moved the booms out more, and raised them up, and I assume that the eye-bolts were used for that purpose before this addition or change was made. At this time, I see that they can be used for lashing tanks, or some bulky load that the ship might take on [47] deck. They could be used for lashing the booms in their present location, but, of course, if the booms were stowed away there, the long booms they have there would interfere with the handling of the lines, and that was probably the reason for moving the booms outward. They could not be used as a lead to a windlass for the reason that an ordinary snatch-block hooked into either of these rings would not bring the line fair to the spools of the winch, without a pennant intervening between the ring and the snatch-block. In my opinion the location of those bolts would indicate instantly to an expert seaman that they were not designed in connection with pulling cargo, because the balance of the equipment on the ship would give an illustration to even an ordinary



(Testimony of Archibald L. Becker.)

seaman that those things were much below the standard of requirement for the purpose of handling cargo. The appearance of them as constructed would be alone sufficient to indicate that they were not there to be used for that purpose; also with reference to the location this applies.

Q. Now, Mr. Becker, supposing in moving a load of laths from over the top of the hatch to some place further aft on this vessel, a line should be run from the top of the hook, through this ring-bolt to the deck, you have just told us about, and then to the right around the lead or chock, and into the windlass, would that, in your opinion, be a proper method for accomplishing that result?

A. Well, that would be the height of folly, to use the ship's equipment in that way, by passing that manila line through that solid ring-bolt.

Q. Why?

A. Because it would wear the line out, if nothing more, and destroy the equipment. Furthermore, in passing the line through there, and if there was a great stress on there, the intensity of pressure on that ring-bolt against the line would [48] have a tendency to part the line. If the line parts with a strain on it, then the result is that the end flies against the operator of the winch, or else the whole load goes back, and swings into the rear house, and endangering the men there. It is the height of folly to pass a line through the solid eye of a ring-bolt, both from an economical standpoint and a technical standpoint.

(Testimony of Archibald L. Becker.)

Q. In your opinion, is that a proper use of that ring-bolt either with or without a snatch-block?

A. It is not, because the ring is not installed in a way to resist a transverse strain. I am familiar with the proper usage of a ship's equipment, and I have accomplished the same result of moving that load aft in several ways. A good way would be to take two lines, one to each spool around the rolling chocks that are provided there on the ship, and start the winch and throw either starboard or port side, and land it where you wanted to. The other way is to take the wood, tie it fast to the lead, put a snatch-block on the load, pull it back with the quarter chock, go ahead with the winch, and then load it wherever you want to. The latter way would not involve any more work than the other way I have mentioned, neither would it involve the expenditure of any more time, because the last way I outlined would not make it necessary to pass the end of the line through a solid eye, and overhaul it. That method would not be technical and obscure to a licensed seaman; they are all familiar with either way that I have described; either way would accomplish the result. The method I have described, or the equivalent, would be followed by a man having in mind the safety of the ship, and he would never resort to the sort of method as was followed here.

Q. Now, suppose the snatch-block had been introduced in [49] connection with this same ring-bolt in performing this operation; what effect

(Testimony of Archibald L. Becker.)

would that have had on the resulting stress upon the ring-bolt itself?

A. Well, the stress on that ring-bolt is directly proportional to the angle of lead away from the ring-bolt to the quarter block. For instance: if that lead goes away at an angle of 60 degrees, then the transverse stress on the ring-bolt is equal to the tension on the line. That is, 100% of the tension in the line. Of course, we all know if it is reversed and goes back, the stress on the ring-bolt is double the stress in the line. In other words, it is proportional for the angle of deviation from the continuation of the line leading to the ring-bolt, from the load. Now, the introduction of a snatch-block in there has a material effect of taking out the short angle of lead, and that fact would have materially reduced the transverse effect on the ring-bolt.

Q. Mr. Becker, have you—is it possible to work out mathematically the reduction of stress, that an ordinary block would have resulted in?

A. Yes, I have worked it.

Q. Have you made such calculations?      A. Yes.

Q. Will you state the result of that calculation?

A. May I look at my notes?

Q. Certainly.

A. The line leading of course in a straight line, the transverse stress is zero.

Q. Say that again.

A. If the line comes through the ring-bolt in a straight line from the lead, the transverse stress on

(Testimony of Archibald L. Becker.)

the ring-bolt is zero. If, however, we lead off 15 degrees past the ring-bolt, out of the path of the line leading to the load, then the stress is one-quarter of the tension on the line. If we lead off 30 degrees, the stress is 51 per cent, well, 52—51.7. 45 degrees, 76.5, 76 hundredths of the tension of the line. [50] That is in each case. At 60 degrees it is equal to the stress in the line; at 75 degrees is 1.2 the stress in the line. 90 degrees, 1.4; 105 degrees, 1.58; 120 degrees,—up to 180 degrees is 2.

Mr. BLACK.—Q. How much difference would a snatch-block—

A. (Interrupting.) The lifting of the load is about 30 degrees, reducing the angle to about 15 degrees, or taking off about 25% of the ultimate stress.

Q. In other words, the force on that ring-bolt would have been reduced 25% by the introduction of an ordinary snatch-block?

A. Yes, from the force alone.

Q. Is there any other effect the snatch-block would have?

A. There is an effect that is a little indeterminate, but it exists, nevertheless. It is the friction of the rope rubbing through the eye-bolt, which is a considerable item. By putting in a snatch-block, you would eliminate a large percentage of that friction, and therefore reduce the stress on that eye-bolt.

Q. Could you give—are you able to give any estimate, whatever, as to the percentage of stress



(Testimony of Archibald L. Becker.)

that would be eliminated had a snatch-block been interposed in that connection?

A. Well, conservatively, the total stress to be eliminated would be 35%, I would say, as an estimate. You know, we have 25% in the angle, and 10% is very, very conservative as to the friction of the line passing through the eye-bolt. It is probably nearer 25%; to make it conservative, make it 10%, which would make the total stress laid upon the eye-bolt by not using the snatch-block 35% greater than what it would be by using the snatch-block.

Q. Now, Mr. Becker, in using the equipment in the manner which I have indicated to you it was used, at that time, several loads had been successfully moved with one of these ring-bolts, would that indicate to you that had a snatch-block been interposed the bolt would have been pulled out, or would it not? [51]

A. The bolt would have probably remained, unless the last load, the load that did pull out, was 25 to 30% in excess of the other loads. No doubt it would have stood under the same conditions.

Cross-examination by Mr. HOGEVOLL.

By the use of the snatch-block the strain on the bolt would be all of 35 per cent less. Looking at this bolt, Defendants' Exhibit 1, it is a seven-eighth ( $\frac{7}{8}$ ) bolt, in good material on a straight pull that bolt would hold about 50,000 pounds, at least two tons and one-half ton. On a transverse pull, you



(Testimony of Archibald L. Becker.)

have nothing but the crushing strength of the wood to resist tipping the bolt over, and when you tip it over and put a pull on it the other way, in turn, you would ream that hole out, and the bolt would come out, or if the wood held you would break the bolt off, and if you broke the bolt off, you would require only one-quarter of the stress that is in a direct pull. The bolt might turn, if the stress on the line was sufficient, not with short leverage, but it might with a long leverage. If the force was sufficient it might finally come out by itself. The ring-bolts here had been placed there for the fastening of the old booms, but they might be used for the new booms. There is nothing to forestall them from putting the booms back where the old position was. There is room for them down there.

(Witness excused.)

#### DEPOSITION OF OLAF GRANDE, FOR DEFENDANTS.

The deposition of OLAF GRANDE was next offered and introduced in evidence on the part of the defendants, which deposition is as follows (sworn).

##### Direct Examination.

My name is Olaf Grande. I am first officer on the "Eldorado" and hold master's papers, unlimited. I was first officer on the "John C. Kirkpatrick" on the date of the accident. I remember [52] Oscar Spurgeon, he was second officer. At

(Deposition of Olaf Grande.)

the time of the accident we were discharging lumber in San Pedro. Spurgeon had charge of the after end of the ship at that time. I gave him orders to see that different orders came aft. There was a load to be hauled aft and away from some other lumber that had to come out first. I gave him instructions to move it aft, but not how it should be done. I did not direct him how to put up the lines, he knows that much himself. That was left entirely to him. I did not give him any instructions as to the use of an eye-bolt. I did not see any of the operation of moving this lumber aft. I was in the other end of the ship then. I first heard of the accident an hour afterwards, when the winch-driver told me about it. Spurgeon told me then that he fell over on the poop-deck by the line he was heaving the load aft with. I asked him if he was hurt, and he said, no, he did not think he was hurt. He did not complain of any pain until the next morning, then he said he did not feel good. I gave him an introduction to the marine doctor, and he left the ship. I offered him to stay in his room two days later, but he said he did not care to stay in the room, and would work around the ship, and he went with us to San Francisco, and he took his watch on the deck.

The next day after the accident, I looked at the place where the lines hit him, and I found a hole in the deck, and I also saw the bolt, it was a screw-bolt, an eye-bolt, about six or seven inches long. It pulled out whole. I looked at the wood in the

(Deposition of Olaf Grande.)

hole. It seemed to me to be in sound condition, good wood.

Cross-examination by Mr. HOGEVOLL.

There was no nut on the bolt. It was a screw without a nut. It was not bent that I could see. The wood seemed to me to be in good condition. I did not find out from my investigation [53] whether the bolt was pulled out sideways or straight out. This bolt was galvanized iron, and before such a bolt could rust, it would take a good many years, anywhere from five to twenty years. A good many years might mean seven years. The load that was pulled was what I would call an average load. It was a load of planks, 2 by 3 to 2 by 12. They are sometimes heavy, and there must have been a strain on it to pull it out. The strain would not have been near as great, if it had been a light load.

Redirect Examination.

I saw no rust on the bolt. It was not rusted. If there had been rust there, I would have seen that. I did not actually see the lumber that was moved, it was all of the same kind of lumber, practically.

(Witness excused.)

## DEPOSITION OF JOHN FINCK, FOR DEFENDANTS.

The deposition of JOHN FINCK, was next introduced in evidence by defendants, which was as follows (sworn).

## Direct Examination.

My name is John Finck, I am chief mate, and I have been in that position about six years, and I have a master's license. I have had much experience in unloading and discharging cargoes for twelve years by means of windlasses and leads. I know what the ordinary practice is in regard to equipment and gear which is used in moving cargoes of lumber on vessels, as I have been constantly in such business for twelve years. If I had to move a load of laths from the hatch aft I would use a snatch-block and a running line. If I wanted to move them aft, I would have the snatch-block and moving block aft and after having run the rope through the snatch-block I would run it to the windlass, to the capstan, I would not run the line through the ring-bolt in the deck, [54] because that is unsafe, there is too much strain on the ring-bolt. By having the block made fast to the ring-bolt, or some other place there, and the rope through the block the rope will go through the block so much easier, and there is not so much strain on the ring-bolt. In all my experience I have never seen a line led through a ring-bolt and around a lead to the windlass without the use of a

(Deposition of John Finck.)

block. A ring-bolt is used for stoppers for lines, for mooring lines, it is sometimes put there to make the booms fast.

Cross-examination by Mr. HOGEVOLL.

I was not present when Spurgeon got hurt, I was not on the ship. A ring-bolt may be used for the fastening of booms, that does not take much strain.

(Witness excused.)

**TESTIMONY OF DR. HOWARD H. MARKEL,  
FOR DEFENDANTS.**

DR. HOWARD MARKEL, a witness called on the part of the defendants, testified as follows (sworn).

**Direct Examination.**

I specialize in orthopedic surgery, by that I mean treatment of diseases or injuries to bones and joints, roughly speaking. I have treated a great many patients for injuries to the spine. I have examined Mr. Spurgeon. I first saw him in a plaster jacket that I removed, and I examined his back and had an X-ray picture taken. I found a great deal of spasm, a tenderness of the muscles on either side of the lower part of the back, but it was mostly on the right side. The X-ray shows that the original fractures which were fractures of the transverse process of the second, third and fourth lumbar vertebrae on the left side are healed. The fractures are united. The spasm and tender-



(Testimony of Dr. Howard H. Markel.)

ness of the back are not due to the fracture *per se*, that is, to the fractures themselves, but rather to a coexisting condition which [55] is shown in the X-ray, which is known as arthritis. The X-ray shows a great deal of arthritis all through the lumbar vertebrae, and by that I mean a chronic rheumatic condition of the joints of the bones, and movement of such joints is then painful. This condition is not due to the injury, it has been of long duration. There is no indication from my examination of this man that he has suffered any permanent disability, that is, not from the fracture. If the cause of the arthritis is removed, he should get entirely well. I believe the injury has something to do with his present condition. It should be well by this time if it were free from rheumatism, considering the accident happened four or five months ago. The union in the bones is good, bony union, and is substantially as strong as it ever was; this appears from the X-ray. The X-ray shows that the fractures are healed and also shows the condition of arthritis.

(The X-ray picture was then offered and introduced in evidence as Defendants' Exhibit 3.)

Cross-examination by Mr. HOGEVOLL.

This man would have the arthritis, if he had had the accident or not; that is shown by the X-ray. The symptoms of arthritis might have developed from a slight lift or a twist; he could have an attack from lumbago which would resemble his present

(Testimony of Dr. Howard H. Markel.)

condition exactly. The symptoms of arthritis would have developed sooner or later whether he had had the accident or not. It might not have come on just when it did, had it not been for the accident, but that kind of a back would bring it out sooner or later. I believe the fractures are all healed, and that he will get well in three months, if he is given treatment for the arthritis in his back.

(Witness excused.) [56]

### TESTIMONY OF ANDREW F. MAHONY, FOR DEFENDANTS.

ANDREW F. MAHONY, one of the defendants, testified as follows (sworn).

#### Direct Examination.

I have been engaged in shipping since 1894. I am familiar with "John C. Kirkpatrick"; she is an American vessel. I am operating that vessel on the Pacific Coast; I am the managing owner; I own 65/600th parts, and I am trustee for 5/600 parts; G. W. Hendry holds 24/600th parts, R. J. Long 45/600th parts, Rosalie Mahony, my daughter, owns 3/600th parts, Rose A. Mahony, my wife, owns 66/600ths, and other various individuals own the rest. The vessel was built on the Pacific Coast, and sold to the French government during the war, and I bought it back for delivery in New York. The vessel is inspected by the United States Government, and by the American Bureau of Inspection, which was equal to Lloyd's and which was the American

(Testimony of Andrew F. Mahony.)

standard of builders. The inspection was for seaworthiness and for protection to the freight; and it was up to the standard set by the United States Government; if it had not been they would not have issued a permit for her to operate. I made inquiries, and know from this that the inspection was made. I have the ship registered under the American Bureau, and it must be kept up to the standard of inspection. The United States Inspector of Hulls also inspected her before they would give her the flag, and they inspected her for seaworthiness, and the engine-room as well, and hulls and boilers. Personally I did not undertake to make an inspection of the ship. We leave it to the captain to look after the deck department; he in turn instructs the mate, if there is anything wrong, to report to him, and he in turn reports to the superintending engineer, who is a practical man, and he goes and looks her over; he is paid to go every time the vessel enters the harbor to give her the "once [57] over," and find out if there was anything wrong on board the ship. That is Mr. Sherman. Mr. Sherman has worked, in his infancy almost, for the Bethlehem Steel. He has worked from the bottom of the ladder, and to-day he represents six of the lumber firms of San Francisco. It is part of his duty to see that the equipment is in good condition, is safe and seaworthy. I make inquiry about the competency of my captains and mates, they are competent; most of them have worked their way upon our vessels.

(Testimony of Andrew F. Mahony.)

Cross-examination by Mr. HOGEVOLL.

I do not remember the date of the last inspection, but she must be inspected every year, as you know. The inspectors would not make any inspection in order to find out if the bolts or screws were safely fastened to the deck, that would not be within their line. If anything was wrong on that deck, the after end, that would be under the second mate. The mate would have to know if the bolts and screws were not in shape. He has charge of the after end, and reports that to his superior officer. I never saw this particular bolt, and I do not know anything about it. I told no one to look after these bolts.

Mr. HOGEVOLL.—We sued for his wages, which would be \$130.00 per month.

The COURT.—That has been paid by the defendant. He got all that at the the expense of the defendant.

Mr. BLACK.—Q. As a shipowner, do you not contribute a certain amount to the maintenance of the Marine Hospital? A. Yes.

#### TESTIMONY OF G. W. HENDRY, FOR DEFENDANTS.

G. W. HENDRY, a witness called on behalf of the defendants, testified as follows (sworn).

##### Direct Examination.

I am the president of the C. J. Hendry Company; the company's [58] business is that of ship chandlers. The company has an interest in the

(Testimony of G. W. Hendry.)

“John C. Kirkpatrick.” I am the managing officer of the company. I do not undertake personally to inspect the condition of vessels in which the company owns a share. I was never on board to look at the condition of the nuts and bolts on the ship. Mr. Mahony is a competent manager.

(Witness excused.)

#### TESTIMONY OF R. J. LONG, FOR DEFENDANTS.

R. J. LONG, a witness called on behalf of the defendants, testified as follows (sworn).

##### Direct Examination.

I own a 45/600th share in the “John C. Kirkpatrick.” I am in the lumbering business, and I am a stockholder in several vessels. I do not undertake personally to inspect vessels nor do I know anything about the equipment on the “John C. Kirkpatrick.” I leave that to the managing agent, Mr. Mahony. I have known him for several years; he is perfectly competent and capable of handling vessels; I leave all details to him.

(Witness excused.)

Defendants rest.

The COURT.—Have you any rebuttal?

Mr. HOGEVOLL.—Yes, Mr. Spurgeon.



TESTIMONY OF OSCAR SPORGEON, FOR  
PLAINTIFF (RECALLED IN REBUT-  
TAL).

OSCAR SPORGEON, the plaintiff, recalled in rebuttal, testified as follows:

The reason I put the rope around this particular ring-bolt was this: When we started to heave the load aft the deck, the load was about two feet above the poop-deck, the load was about twelve or fifteen feet over the deck, and the first that happened was that the line jumped off that particular spool in the corner, she jumped clean out and nearly knocked my head off; that is the reason I had to put it in the ring-bolt to hold it down. There was another way to do it, if the mate would have given me [59] time to rig up the gears. Ole Grande was the mate. This particular ring-bolt had been used for that particular purpose, when we put the laths aboard. I never felt any arthritis before the accident. I have not been sick a day in my life.

(Witness excused.)

Mr. HOGEVOLL.—We have no further testimony.

Mr. BLACK.—The defendants move for a directed verdict in their favor in this case, for the reason that the evidence shows an entire lack of culpability in failing to make, equip and supply safe equipment for the vessel, in that the evidence conclusively demonstrated that reasonable and proper equipment was furnished on this ship, for the purposes for which that equipment was intended; and that the

injury arose entirely through a failure to use the equipment for those purposes, and from a misuse of the appliances on the vessel, and a use for purposes for which the shipowners did not intend they should be used, and the implement was originally furnished; and on the further ground that the evidence conclusively demonstrates that the entire cause of the injury was the plaintiff's failure to use the ship's equipment that was properly there to effect the purpose for which the ring-bolt was used, that carried away at the particular time.

The COURT.—I will hear you if you have anything to say in behalf of the motion.

(Argument on motion for directed verdict.)

The COURT.—The duty of a master of a ship is the same as that of any other—or of the owner of the ship is the same as that of any other employer of labor, that is to say, he must use and exercise ordinary and reasonable care to make the place and the instrumentalities with which seamen work reasonably safe. [60]

No employer of labor is an insurer that the place will be safe, nor is he an insurer of his appliances that they will be safe. All that he undertakes to do, as the law requires him to do, is to exercise reasonable care in proportion to the circumstances, to make the place and the appliances reasonably safe.

His duty in furnishing appliances is to furnish appliances reasonably appropriate for the purposes for which they are intended and supplied.

The difficulty with the plaintiff's case is that he has used the appliances intended for one purpose for

another purpose, a purpose not intended in the beginning, and which no witness on either side has said was intended for the particular purpose. A master is not obliged to furnish an instrumentality which is fit to do and intended to do one thing with, to also be fit for any other use that the servant may devote it to and injure himself. For instance, in this particular case, the seaman, the second mate in full charge of the operations, was to choose his own way of doing the work. He had that power and authority. There is no testimony that anyone directed him to select this particular way. He did it of his own volition. He could have rigged slings at other places, with blocks, to give him the purchase that he desired, that would bring his lines in the orderly arrangement that would be necessary to move this lumber, but instead of doing it, he chose this particular way, and he runs the rope through this ring-bolt, that was on the floor of the deck of the ship.

Mr. HOGEVOLL.—But—

The COURT.—Counsel will sit down, and not interrupt while the Court is talking. Now, all the evidence is that the ring-bolts were there for the purpose of lashing the masts, or the booms, when they were stowed away, when the ship is [61] at sea, or as a place for stopping lines or other lashing purposes; but they were not at all intended to serve as bases to reeve ropes for the purpose of hauling cargo or shifting or moving cargo about the ship. The construction of them would render them unsafe for that purpose. Every witness who has testified

in this case has testified that it is bad seamanship for anyone to make use of those ring-bolts for the purpose for which this plaintiff devoted them, because they are liable to turn or screw out and the friction is likely to tear them loose, as was done in this case.

Now, the Master is not obliged to guard against anything of that sort. He is not obliged to anticipate. He understands, and has a right to understand, that his seamen, and especially those that are mates and duly licensed as mates, have sufficient knowledge of seamanship to know what every appliance and instrumentality in the ship is to be used for, and to devote it to no other purpose; and if he misuses them, or devotes them for another purpose, that is something the master could not guard against. He cannot guard against the misuse of his appliances on a ship at sea, and whoever misuses them, the law says that it is his fault, and no other.

The use of a ladder, for example: it is used to go up and down on, and when the ladder was bad, and the seaman was hurt going up and down, he was putting it to the proper use, and he was injured by a defective appliance, and was held entitled to recover; but it was not held that if he took it from the place and attempted to use it as a carrier of cargo, that he would then be entitled for damages from an owner who could not help his misuse of it.

So, Gentlemen, the case as I see it—the Court always wants a case to go to a jury, when there is a chance for reasonable [62] men to differ. If there was any chance to differ on the proposition



that this was not an appliance intended to move cargo, then I would feel that the case must go to the jury; but whenever there is no evidence to that, then it becomes a question of law, and it is the Court's duty to withdraw it, and not send it to the jury in the hope that, through sympathy or some other motive of that sort, they would be moved to give a verdict for the plaintiff.

Now, there is no evidence in this case that this ring-bolt was intended by any other reasonable man to pull laths, or to be used for any other purposes than for rope-stropping, and other light work that does not place strain on it. When this plaintiff devoted this ring-bolt to moving cargo, he misused it. His owner never intended he should use it for that purpose; the owner couldn't guard against it, and if plaintiff took a chance and injured himself, he assumed all the risk, and his injury, as unfortunate as it is, is nothing for which he can ask the owners to compensate. They gave him hospitalization while he was sick; that is something they are bound to give him, no matter by what negligence of his own he is injured, and though the Master not at fault; the seaman is always entitled to look to the owner of the vessel for his hospitalization, board and lodging, until he is well, and this unfortunate plaintiff gets that in this case; but injured and hurt by his own indiscretion, his misuse of the appliances which the owner furnished him, he is not entitled to ask the Master to compensate him for the injury suffered, serious as it is.



The Court will grant the motion of the defendants, and a verdict may be entered for the defendants.

Mr. HOGEVOLL.—May I ask for an exception?  
[63]

The COURT.—Exception will be noted.

Mr. HOGEVOLL.—The plaintiff excepts to the ruling of the Court for the following reasons: That the testimony is in conflict, and especially the testimony of the winchman Lauritzen, who testified that that work has gone on while he was winch-driver. He was an eye-witness, and he said the bolt was used for that particular purpose; and we ask for an exception.

The COURT.—Take the exception as noted, although counsel has misstated Mr. Lauritzen's testimony.

Mr. BLACK.—Might we withdraw these exhibits from the custody of the Court?

The COURT.—Not without the consent of the other party.

And thereafter, on the 19th day of December, 1924, the parties made the following stipulation extending time:

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(Title of Court and Cause.)

STIPULATION AND ORDER EXTENDING  
TIME TO AND INCLUDING JANUARY 20,  
1925, TO PREPARE AND FILE BILL OF  
EXCEPTIONS.

By stipulation between the parties the plaintiff is granted up to and including the 20th day of Janu-

ary, 1925, in which to prepare and serve a bill of exceptions in the above-entitled action.

Dated this 19th day of December, 1924.

(Signed) S. T. HOGEVOLL,  
Attorney for Plaintiff.

McCUTCHEEN, OLNEY, MANNON &  
GREENE,

Attorneys for Defendants.

It is so ordered by the Court.

JOHN S. PARTRIDGE,  
Judge.

Filed on the 20th day of December, 1924. [64]

And now, within the time allowed by law and by said stipulation, comes the plaintiff and asks that the said and foregoing bill of exceptions may be considered a full, true and correct bill of exceptions in the above-entitled action.

Correctly engrossed as settled.

S. T. HOGEVOLL,  
Attorney for the Plaintiff.

#### STIPULATION RE SETTLING AND ALLOW- ING BILL OF EXCEPTIONS.

By consent of the parties, the above and foregoing bill of exceptions may be signed, settled and allowed as true and correct.

Dated this 13 day of March, 1925.

S. T. HOGEVOLL,  
Attorney for the Plaintiff.

FARNHAM P. GRIFFITHS,  
McCUTCHEEN, OLNEY, MANNON &  
GREENE,

Attorneys for Defendants.

## ORDER SETTLING BILL OF EXCEPTIONS.

The foregoing bill of exceptions, having been correctly engrossed as settled, and being now presented to the Court in due time and found to be correct after amendment by the Court, the same is hereby settled, certified and allowed, as a true bill of exceptions taken upon the trial of the issues in said cause and of the law herein.

Dated this 14 day of March, 1925.

BOURQUIN,  
Judge of said Court.

[Endorsed]: Filed Mch. 16, 1925. Walter B. Mal-  
ing, Clerk. [65]

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In the District Court of the United States in and  
for the Northern District of California.

No. 17,168.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW F. MAHONEY et al.,

Defendants.

## ORDER ALLOWING WRIT OF ERROR.

Upon motion of S. T. HogevoU, attorney for the plaintiff in the above-entitled action, and upon the filing of the petition for writ of error and assignments of error:

IT IS ORDERED that writ of error as prayed for in said petition be allowed, and that the amount of the supersedeas bond be given in the sum of Two Hundred and Fifty Dollars, and that upon giving of said bond all proceedings be suspended, stayed and superseded pending the determination of said writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated this 29 day of April, 1925.

JOHN S. PARTRIDGE,

Judge.

[Endorsed]: Filed Apr. 29, 1925. Walter B. Maling, Clerk. [66]

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In the District Court of the United States in and for the Northern District of California.

No. 17,168.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW F. MAHONEY et al.,

Defendants.

PETITION FOR A WRIT OF ERROR.

Oscar Spurgeon, the plaintiff in the above-entitled action, feeling himself aggrieved by the order of the Court in the above-entitled action whereby the jury was instructed to return a verdict in favor of the defendant and against the plaintiff on or about the seventeenth day of December, 1924, and

judgment entered thereupon according to such instructed verdict, comes now by S. T. Hogevoll, his attorney, and petitions said Court for an order allowing him the said plaintiff, to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the bond which the said defendant shall give, and furnish upon said writ of error, and that upon the giving of a supersedeas bond all further proceedings in this court be suspended, stayed and superseded until the determination of said writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

And your petitioner will ever pray.

Dated this 28th day of April, 1925.

S. T. HOGEVOLL,

Attorney for Plaintiff and for Plaintiff in Error.

[Endorsed]: Filed Apr. 29, 1925. Walter B. Maling, Clerk. [67]

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In the District Court of the United States in and  
for the Northern District of California.

No. 17,168.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW F. MAHONEY et al.,

Defendants.



ASSIGNMENTS OF ERROR.

Now comes Oscar Spurgeon, the plaintiff in the above-entitled cause, by S. T. Hogevoll, his attorney, and specifies the following as errors upon which he will urge his writ of error in the above-entitled action.

(1)

The Court erred in sustaining the motion of the defendant for a directed verdict in the favor of the defendants and against the plaintiff at the end of the testimony.

(2)

The Court erred in the following matters at the end of the trial:

Mr. HOGEVOLL.—The plaintiff excepts to the ruling of the Court for the following reasons: That the testimony is in conflict, and especially the testimony of the winchman Lauritzen, who testified that that work had gone on while he was winch-driver. He was an eye-witness, and he said the bolt was used for that particular purpose, and we ask for an exception.

The COURT.—Take the exception as noted, although the counsel has misstated Mr. Lauritzen's testimony.

( Dated this 28th day of April, 1925.

S. T. HOGEVOLL,  
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 29, 1925. Walter B. Maling, Clerk. [68]

In the District Court of the United States in and  
for the Northern District of California.

No. 17,168.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW F. MAHONEY et al.,

Defendants.

### BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS:

That we Oscar Spurgeon, as principal and H. Slikeman and A. L. Eggum, as sureties, are held and firmly bound unto the defendants and each of them jointly and severally in the sum of Two Hundred and Fifty (\$250.00) Dollars, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated this 28th day of April, 1925.

The condition of the above undertaking is such that whereas the above-named plaintiff, has sued out a writ of error in the United States Circuit Court of Appeals in and for the Ninth Circuit to reverse the judgment entered in the above-entitled action in favor of the defendants and against the plaintiff for costs, for — Dollars. [69]

Now, therefore, the condition of this obligation is such that if the above-bounden, Oscar Spurgeon, shall prosecute such writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise to be and remain in full force and effect.

We further agree and bind ourselves, jointly and severally by these presents, that in the event of a breach of any conditions herein, the Court may, upon ten days' notice, proceed summarily in the action or proceeding to ascertain the amount due on said breach for which this bond is given, and render a judgment and issue an execution for such amount as may be found to be due.

Dated this 28th day of April, 1925.

OSCAR SPORGEON.

By S. T. HOGEVOLL,

His Attorney.

H. SLIKEMAN.

A. L. EGGUM.

State of California,

City and County of San Francisco,—ss.

H. Slikeman and A. L. Eggum, being by me first duly sworn, each for himself, deposes and says: That he is a resident and a freeholder within the State of California, and is worth the sum specified in the within undertaking over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

H. SLIKEMAN and

A. L. EGGUM.

Subscribed and sworn to before me this 28th day of April, 1925. [70]

[Seal] JOHN L. MURPHY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

The within bond is approved this 29th day of April, 1925.

JOHN S. PARTRIDGE,  
Judge.

[Endorsed]: Filed Apr. 29, 1925. Walter B. Maling, Clerk. [71]

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In the Southern Division of the United States District Court for the Northern District of California.

Clerk's Office.

No. 17,168.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW F. MAHONEY et al.,

Defendants.

PRAECIPE FOR PREPARING TRANSCRIPT  
ON APPEAL.

To the Clerk of Said Court:

Sir:

Please prepare the record on appeal and include the following papers:

- (1) Complaint filed on or about Sept. 3d, 1924.
- (2) Answer to complaint filed about Oct. 24th, 1924.
- (3) Order directing verdict.
- (4) Judgment entered on the directed verdict about Dec. 17th, 1924.
- (5) Bill of exceptions filed about March 16th, 1925.
- (6) Assignments of error filed April 29, 1925.
- (7) Petition for writ of error filed about April 29, 1925.
- (8) Citation on writ of error filed April 29, 1925.
- (9) Order allowing writ of error filed about April 29, 1925.
- (10) Writ of error filed about April 30, 1925.
- (11) Bond on writ of error filed about April 29, 1925.

S. T. HOGEVOLL,  
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 29, 1925. Walter B. Maling, Clerk.

[Endorsed]: No. 17,168. In the Southern Division of the United States District Court, Northern District of California. Oscar Spurgeon vs. Andrew F. Mahoney. Praeceptum for Preparing Transcript on Appeal. [72]





In the District Court of the United States in and  
for the Northern District of California.

No. 17,168.

OSCAR SPORGEON,

Plaintiff,

vs.

ANDREW F. MAHONEY et al.,

Defendants.

### WRIT OF ERROR.

The President of the United States, to the Honorable, the Judges of the District Court of the United States for the District Court, Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said District Court before you, between Oscar Spurgeon, plaintiff in error, and Andrew F. Mahoney et al., defendants in error, a manifest error has happened to the great damage of the said plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then and under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth





## CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States to Andrew F.

Mahoney, the defendant herein, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 29th day of May, 1925, being within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Northern District of California wherein Oscar Spurgeon is the plaintiff in error and Andrew F. Mahoney et al., are the defendants in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable JOHN S. PARTRIDGE, Judge of the District Court of the United States in and for the Northern District of California, this 29th day of April, 1925.

JOHN S. PARTRIDGE,

United States District Judge.

Service of the within citation by copy, admitted this — day of —, 1925.

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Attorneys for Defendants in Error.



Due service of the within citation is hereby admitted on the 29th day of April, 1925.

McCUTCHEM, OLNEY, MANNON &  
GREENE,

Attorneys for Defendants.

[Endorsed]: No. 17,168. In the Southern Division of the United States District Court for the Northern District of California, Second Division. Oscar Spurgeon, Plaintiff, vs. Andrew F. Mahoney et al., Defendants. Citation on Writ of Error. Filed Apr. 30, 1925. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [77]

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[Endorsed]: No. 4586. United States Circuit Court of Appeals for the Ninth Circuit. Oscar Spurgeon, Plaintiff in Error, vs. Andrew F. Mahony, Andrew F. Mahony, Trustee, Rose A. Mahony, Rosalie Mahony, Rose C. Mahony, Marie J. Heaphey, C. J. Hendry Co., Inc., Gertrude M. Kinney, Carl T. Long, Marguerite M. Long, James McLaughlin, Gertrude C. McCabe, Robert J. Long, Emil Klicka, George A. Stock, William Anderson and John C. Kirkpatrick, Defendants in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed May 6, 1925.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

